

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

STEVEN DARBY MCDONALD,

Plaintiff,

v.

JOHN DAVID KENNEY, G. STEVEN  
HAMMOND,

Defendants.

CASE NO. C13-5647BHS/KLS

ORDER DENYING SECOND  
MOTION OBJECTING TO  
AMENDMENT, REQUEST FOR  
KRAIN HEARING AND  
APPOINTMENT OF COUNSEL

On October 3, 2012, Plaintiff Steven Darby McDonald was directed to file an amended complaint or to show cause why his complaint should be not be dismissed for failure to state a claim under 42 U.S.C. § 1983. ECF No. 16. This was the second time Plaintiff was granted leave to do so. *See* ECF No. 9. Instead of filing an amended complaint or otherwise responding to the Court's Order, Plaintiff filed a second "objection" to the Court's Order and again requested a *Krain* hearing and the appointment of counsel. ECF No. 17. The Court previously denied these motions. ECF No. 16. Plaintiff has not yet filed a viable complaint under 42 U.S.C. § 1983 in this action. His deadline for doing so remains October 31, 2013. *Id.*, p. 3.

Accordingly, it is **ORDERED**:

(1) Plaintiff's second objection (ECF No. 17) is **DENIED**.

(2) Plaintiff may file an amended complaint **on or before October 31, 2013**. If the amended complaint is not timely or fails to adequately address the issues raised herein, the Court

1 will recommend dismissal of this action as frivolous pursuant to 28 U.S.C. § 1915 and the  
2 dismissal will count as a “strike” under 28 U.S.C. § 1915(g). Pursuant to 28 U.S.C. § 1915(g),  
3 enacted April 26, 1996, a prisoner who brings three or more civil actions or appeals which are  
4 dismissed on grounds they are legally frivolous, malicious, or fail to state a claim, will be  
5 precluded from bringing any other civil action or appeal in forma pauperis “unless the prisoner is  
6 under imminent danger of serious physical injury.” 28 U.S.C. § 1915(g).

7  
8 **DATED** this 24<sup>th</sup> day of October, 2013.

9  
10  
11 

12 Karen L. Strombom  
13 United States Magistrate Judge  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24